

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

FRED C. PEDERSEN, SR.,

Plaintiff,

vs.

UNITED STATES,

Defendant.

CASE NO.: _____

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff Fred C. Pedersen, Sr., by and through his attorneys, and for his cause of action against Defendant, states and alleges as follows:

JURISDICTION AND PARTIES

1. This case arises under 28 U.S.C. 1346(b) and 2671-2680 of the Federal Tort Claims Act.
2. Plaintiff, age 64, is a resident of Omaha, Douglas County, Nebraska.
3. The Omaha VA Hospital is located in Omaha, Douglas County, Nebraska.

FACTS

4. On the December 13, 2004, Plaintiff was presented to the VA Hospital in Omaha, Douglas County, Nebraska and a CT scan of his head was conducted. The scan revealed a left frontal lobe tumor measuring 2.1 centimeters by 1.6 centimeters. Plaintiff was not advised of the positive finding on the CT scan. Several years elapsed without any incident.
5. On October 4, 2013, Plaintiff presented to the VA Hospital in Omaha, Douglas County, Nebraska with complaints of neurologic disfunction, including inability to move his extremities on the right side, dizziness, and loss of consciousness. He had

been experiencing such symptoms for the past few months. A CT scan of his head was conducted which revealed that the tumor, discussed in Paragraph 4 above, had grown extensively. Plaintiff was transferred to The Nebraska Medical Center on October 5, 2013 for surgical intervention.

6. An MRI was conducted at The Nebraska Medical Center on October 6, 2013 which revealed that the tumor, as discussed in Paragraph 4, has grown to 5.8 centimeters by 5.7 centimeters by 6 centimeters.

7. On October 7, 2013, the neurosurgical team at The Nebraska Medical Center conducted a craniotomy and resection of the left frontal tumor, known as a meningioma tumor.

8. Plaintiff was discharged from The Nebraska Medical Center on October 25, 2013 with ongoing neurologic complications, both cognitive and physical in nature. At the time of discharge, he was diagnosed with cognitive deficit/symbolic disfunction and motor disfunction.

9. That Plaintiff was admitted to an acute rehabilitation facility in Lincoln, Nebraska known as Madonna Rehabilitation Hospital for occupational physical and speech therapy on October 25, 2013. He was discharged from this hospital on December 7, 2013.

COUNT I – RES IPSA LOQUITUR

10. That the failure to advise Plaintiff of the positive finding on the CT scan conducted December 13, 2004 at Defendant VA Hospital is of the type that would not ordinarily have occurred without negligence.

11. That Defendant VA Hospital received the results of the positive finding on the CT scan conducted on December 13, 2004 and the findings of that CT scan were under the sole control of this Defendant.

12. That as a result of the failure to notify Plaintiff of the positive finding on the CT scan dated December 13, 2004, Plaintiff sustained severe and permanent neurologic insult and injury due to the fact that the tumor was allowed to grow and progress due to a delay in diagnosis and treatment.

13. That there is no other plausible explanation for the Defendant's failure to advise the Plaintiff of the positive finding on the CT scan dated December 13, 2004 and no other plausible explanation for the delay in diagnosis and treatment and resultant neurologic insult and injury.

COUNT II – MEDICAL NEGLIGENCE

14. That the Defendant had a duty to advise Plaintiff of the positive finding on the CT scan conducted at its hospital on December 13, 2004.

15. That the Defendant was negligent in failing to communicate to Plaintiff the positive finding on the CT scan dated December 13, 2004.

16. That as a direct and proximate cause of Defendant's negligence, Plaintiff was deprived of the chance to seek immediate treatment and in turn sustained severe and permanent neurologic injury and other damages as more fully set forth below.

DAMAGES

17. That as a direct and proximate result of Defendant's negligence, the tumor in the left frontal lobe of Plaintiff's head was allowed to grow and progress and cause neurologic injury.

18. That as a direct and proximate result of Defendant's negligence, Plaintiff sustained severe and permanent neurologic injury and damage that has impaired his motor function, speech, and cognitive abilities.

19. That as a direct and proximate result of Defendant's negligence, Plaintiff was deprived of the ability to obtain immediate treatment back in December of 2004 and remedy the tumor prior to its growing, progressing, and causing neurologic damage.

20. That as a direct and proximate result of Defendant's negligence, Plaintiff has incurred medical expenses to date of approximately \$252,120.00.

21. That as a direct and proximate result of Defendant's negligence, Plaintiff will incur medical expenses in the future.

22. That as a direct and proximate result of Defendant's negligence, Plaintiff has lost income and in the future will lose income.

COMPLIANCE WITH THE NEBRASKA HOSPITAL MEDICAL LIABILITY ACT

23. To the extent the Nebraska Hospital Medical Liability Act found at §44-2801 et seq., Nebraska Revised Statutes, is applicable to Plaintiff's claims, Plaintiff affirmatively waives her right to a panel review pursuant to §44-2840 (4) Nebraska Revised Statutes.

24. Contemporaneously with the filing of this Complaint, Plaintiff has served a copy of the Complaint upon the Director of the Department of Insurance, State Capitol Building, Lincoln, Nebraska 68509, by regular U.S. mail.

WHEREFORE, Plaintiff prays for judgment against the Defendant for damages as are reasonable in the premises, for his special damages, special damages to be incurred in the future, general damages and for costs expended herein.

DATED this 1st day of August, 2014.

FRED C. PEDERSEN, SR., Plaintiff

By: /S/ David J. Cripe
David J. Cripe, #21463
HAUPTMAN, O'BRIEN, WOLF,
& LATHROP, P.C.
1005 South 107th Avenue, Suite 200
Omaha, Nebraska 68114
(402) 390-9000
dcripe@hauptman-obrien.net
ATTORNEYS FOR PLAINTIFF